EEO MODULE 1:

HUMAN RESOURCES
ON LINE
EEO TRAINING

HOW DOES THE ON-LINE TRAINING PROGRAM WORK?

- **This Power Point presentation training will take about 30 minutes to complete and includes a short quiz at the end.**

- **This presentation will advance automatically. If you find that it is too slow, you can advance by clicking the mouse or using your page up/page down buttons.**

INTRODUCTION

- **Navy directives require civilian and military supervisors and managers to receive Equal Employment Opportunity training annually. To fulfill this obligation, we have developed on-line EEO training as an alternative to the normal classroom/theatre style training coordinated each year.**

EEO UPDATE

I. Introduction
   A. Welcome
   B. Training Objectives

II. Update of EEO
   A . Harassment (sexual and non-sexual)
   B. Sexual Orientation
   C. Religious Discrimination
   D. Genetic Information
   E. Retaliation
   F. 29 CFR 1614

III. Quiz

WELCOME

- **Congratulations for selecting the Human Resources On-Line EEO Training Program, EEO UPDATE (Module 1). This training is appropriate for both management and employees.**
- **We all have the right to be treated fairly at work, and everyone deserves to feel comfortable and be treated in a professional manner.**

- **This program will update you on the recent changes to Federal laws and Executive Orders which protect the rights of all personnel. The training will also help managers and supervisors to avoid situations which give rise to discrimination complaints.**

TRAINING OBJECTIVES

- **To understand the basic statutory obligations of recent changes to EEO laws, Executive Orders and Enforcement Guidance.**

- **To reinforce the Department of Navy's commitment to provide equal employment, advancement and training opportunities to all civilian personnel regardless of race, color, religion, national origin, sex, age, sexual orientation, or physical or mental handicap.**

A. HARASSMENT

- **Harassment in the workplace can be damaging to both employees and the organization. Harassment affects the victim's physical and emotional health, resulting in loss of productivity, increased absenteeism, low morale and damaged teamwork.**

- **For the employer, harassment can lead to increased turnover, law suits, negative publicity, and lengthy formal investigations. It is necessary that all employees and supervisors become aware of illegal workplace harassment and take responsibility for preventing and stopping all forms of harassment.**

WHAT IS HARASSMENT?

- **Some "harassment" can be legitimate. A supervisor who frequently asks an employee about the status of an assigned project is not engaging in harassing behavior. The supervisor has a legitimate business reason for the questions and would not be considered to have unlawfully harassed the employee.**

- **Harassment in the workplace occurs when an individual or group of people is treated inappropriately because of their membership in one or more protected groups. Religion, sex, race, national origin, color, age, sexual orientation, physical or mental handicap are examples of groups protected under Federal laws.**

TYPES OF HARASSMENT

The three most common types of illegal harassment are:

Verbal — **Offensive jokes and language, threats and comments about a person's body or appearance are examples of verbal harassment.**

Physical — **Touching, holding, grabbing and other unwanted physical and sexual assault.**

Non-verbal — **Staring at a person's body, offensive gestures and circulating degrading or offensive letters, pictures, email or cartoons.**

HARASSMENT OF OTHER PROTECTED BASES

Employers have an affirmative duty to maintain a work environment that is free from harassment. Managers and Supervisors:

- **Must treat non sexual harassment incidents with the same seriousness and degree as sexual harassment;**
- **Supervisors and managers must conduct an inquiry promptly and take corrective action.**

LIABILITY FOR UNLAWFUL HARASSMENT BY SUPERVISORS

Two significant Supreme Court rulings, Faragher v. City of Boca Raton and Burlington Industries v. Ellerth made clear that employers are subject to vicarious liability for unlawful harassment by supervisors. The court held that:

The employer is automatically liable for a supervisor's unlawful harassment if it results in a *tangible* employment action. Ex: discharge, demotion or undesirable reassignment.

LIABILITY FOR UNLAWFUL HARASSMENT BY SUPERVISORS (cont)

- The standard of liability applies to all forms of unlawful harassment; e.g., race, color, age, religion, national origin, sex, physical/mental handicap;
- The employer is liable for harassment by co-workers or non-employees if it knew or should have known of the misconduct, unless the employer can show that it took immediate and appropriate corrective action.
- The employer is responsible for the acts of its supervisors and must prevent harassment.
- Employees should avoid or limit harm from harassment by seeking advice, reporting the incident and seeking redress.

HOW TO LIMIT LIABILITY!

- **Employers may avoid liability and limit damages from unlawful harassment if there is NO tangible action involved; AND**
  - **The employer exercised reasonable care to prevent and correct promptly any harassing behavior; AND**
  - **The employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer to avoid harm otherwise.**

DEFINITION OF SEXUAL HARASSMENT

Sexual harassment is defined as:

A form of discrimination that involves

unwelcome sexual advances, requests

for sexual favors and other verbal or

physical conduct of a sexual nature

when:

(1) Submission to or rejection of such conduct is either explicitly or implicitly a term or condition of a person's job, pay or career, or

(2) Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person, or

(3) Such conduct interferes with an individual's performance or creates an intimidating, hostile or offensive environment.

AVENUES OF REDRESS

Employees are responsible for reporting incidents of sexual harassment to the appropriate supervisory level if:

- **Behavior does not stop after harasser is confronted.**
- **Employee is uncomfortable in addressing harasser.**
- **Behavior is severe and possibly criminal in nature.**

OTHER AVENUES OF REDRESS AVAILABLE

Employees may also pursue complaints of sexual harassment through these formal avenues:

- **Administrative Grievance or Negotiated Grievance Procedures, as applicable**
- **EEO Discrimination Complaint Process**
- **USC Title 10 Section 1561**

HELP IS AVAILABLE!

Employees should seek advice from:

- **DON Sexual Harassment Advice Line (1-800-253-0931)**
- **HRO Norfolk EEO Department**
  (757) 445-1664
  DSN 565-1664

- **Your local servicing HRO**

TITLE 10 USC 1561

Title 10 Section 1561 requires that if an employee notifies command management of a sexual harassment allegation, the CO or OIC of that command will proceed with an investigation as outlined in the enclosure below. At the same time, that CO or OIC should ensure that the employee is aware of his/her right to pursue the discrimination complaint process under 29 CFR 1614 and of the 45-calendar day time limit within which to do so.

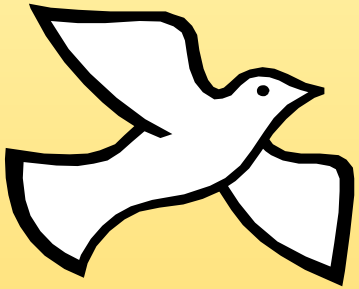
TITLE 10 USC 1561

C. SEXUAL ORIENTATION

- **Executive Order 13087 prohibits discrimination based on sexual orientation**
- **Employees have no enforcement rights with EEOC but may pursue sexual orientation discrimination complaints through these forums:**
  - **Merit Systems Protection Board**
  - **Negotiated Grievance or Administrative Grievance Procedures, as applicable**
  - **Office of Special Counsel**

D. RELIGIOUS DISCRIMINATION

- **EEOC guidance provides employees may engage in personal religious *expression* to the greatest extent possible, consistent with workplace efficiency and requirements of Federal law.**



Example:

Employers may restrict all posters, or posters of a certain size,

in private work areas, or require that such posters be displayed

facing the employee and not on common walls; but the

employer cannot single out religious or anti-religious posters

for harsher or preferential treatment.

Continued…

- **Employers may not regulate employees personal religious expression on the basis of its content or viewpoint.**

- **Example:**

In informal settings, such as cafeterias and hallways, employees are entitled to discuss their religious views with one another, subject only to the same rules of order as applied to other employee expression. If an agency permits unrestricted non-religious expression of a controversial nature, it must likewise permit equally controversial religious expression.

Continued…

- **Employers cannot restrict personal religious expression except when outweighed by government interest or public service or when expression intrudes upon rights of other employees or creates the appearance to a reasonable observer of an official endorsement of religion.**

Example:

During a coffee break, one employee engages another in a polite discussion of why his faith should be embraced. The other employee disagrees with the first employee's religious commitment, but does not ask that the conversation stop. Under these circumstances, agencies would not restrict or interfere with such speech.

ACCOMMODATION OF RELIGIOUS EXERCISE

- **Federal law requires an agency to accommodate employees' *exercise* of their religion unless such accommodation would impose an undue hardship on the conduct of the agency's operations.**

- **A religious accommodation cannot be denied if the agency regularly permits similar accommodations for non-religious purposes.**

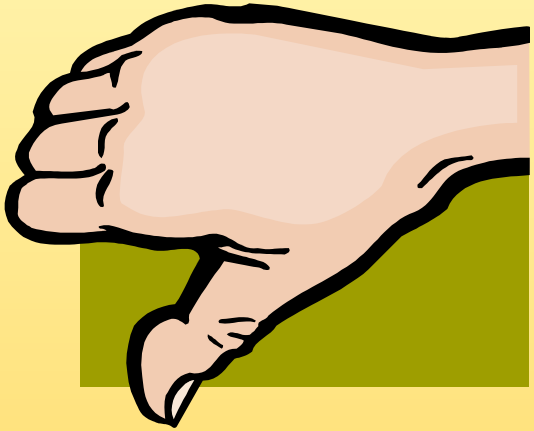
E. GENETIC INFORMATION

- **Executive Order 13145 prohibits discrimination based on protected genetic information.**

- **Protected genetic information covers the results of an individual's genetic tests and the genetic tests of the individual's family member.**

- **Protected genetic information or family medical history should not be collected, disclosed or used in any manner. It does not provide information about an individual's current ability to perform a job.**

EXAMPLES OF GENETIC DISCRIMINATION



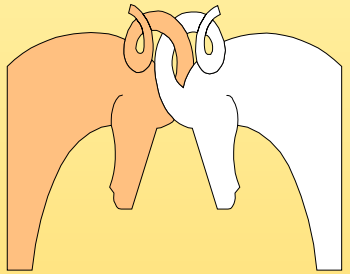
- **Denying someone a promotion because the employee participated in a cancer study involving genetic testing**
- **Laying off an employee because of a family history of cancer**

F. RETALIATION

- **EEOC Compliance Manual defines retaliation to include three essential elements:**
  - ***protected activity*** **– opposition to discrimination or participation in the statutory complaint process**
  - ***adverse actions*** **– denial of promotion, job benefits, demotion, suspension, termination, reprimands**
  - ***Causal connection*** **– between the protected activity and the adverse action**

PROTECTED ACTIVITY

- **EEOC regulations protect those individuals who:**



- **Oppose a practice made unlawful by one of the employment discrimination statutes; or**

- **File a charge, testify, assist, or participate in any manner in an investigation, proceeding, hearing or litigation under Title VII, the ADEA, the EPA or the ADA;**

EXAMPLES OF OPPOSITION

- **Threatening to file a charge or other formal complaint alleging discrimination;**
- **Complaining to anyone about alleged discrimination against oneself or others;**
- **Refusing to obey an order because of a reasonable belief that it is discriminatory;**
- **Requesting reasonable accommodation or religious accommodation;**
- **Person claiming retaliation need not be the person who engaged in the opposition;**
- **Opposition need only be based on reasonable and good faith belief.**

PROOF OF CAUSAL CONNECTION

- **In order to establish unlawful retaliation, there must be proof that the respondent took an adverse action because the charging party engaged in protected activity.**

- **Proof of this retaliatory motive can be through direct or circumstantial evidence.**

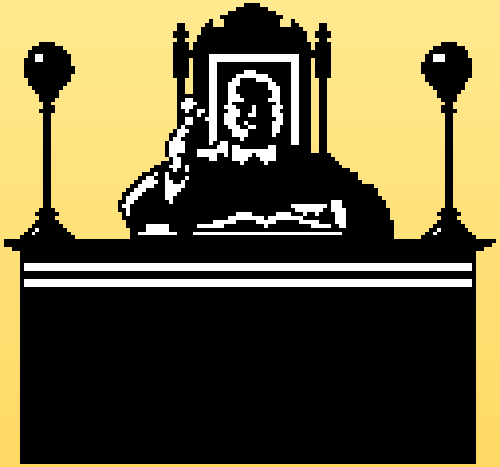
G. 29 CFR 1614

Effective 9 November 1999, the 29 Code of Federal Regulations 1614 relating to the processing of discrimination complaints was revised to address the continuing criticisms of the process being too long and inefficient.

There was a widespread perception that the process was unfair; agencies could revise decisions of Administrative Judges (AJs) regarding whether the agency had violated the law; and

G. 29 CFR 1614 (cont)

The process led to fragmentation of complaints, bogging down the system and making it difficult for Federal employees to prove that they have been discriminated against.



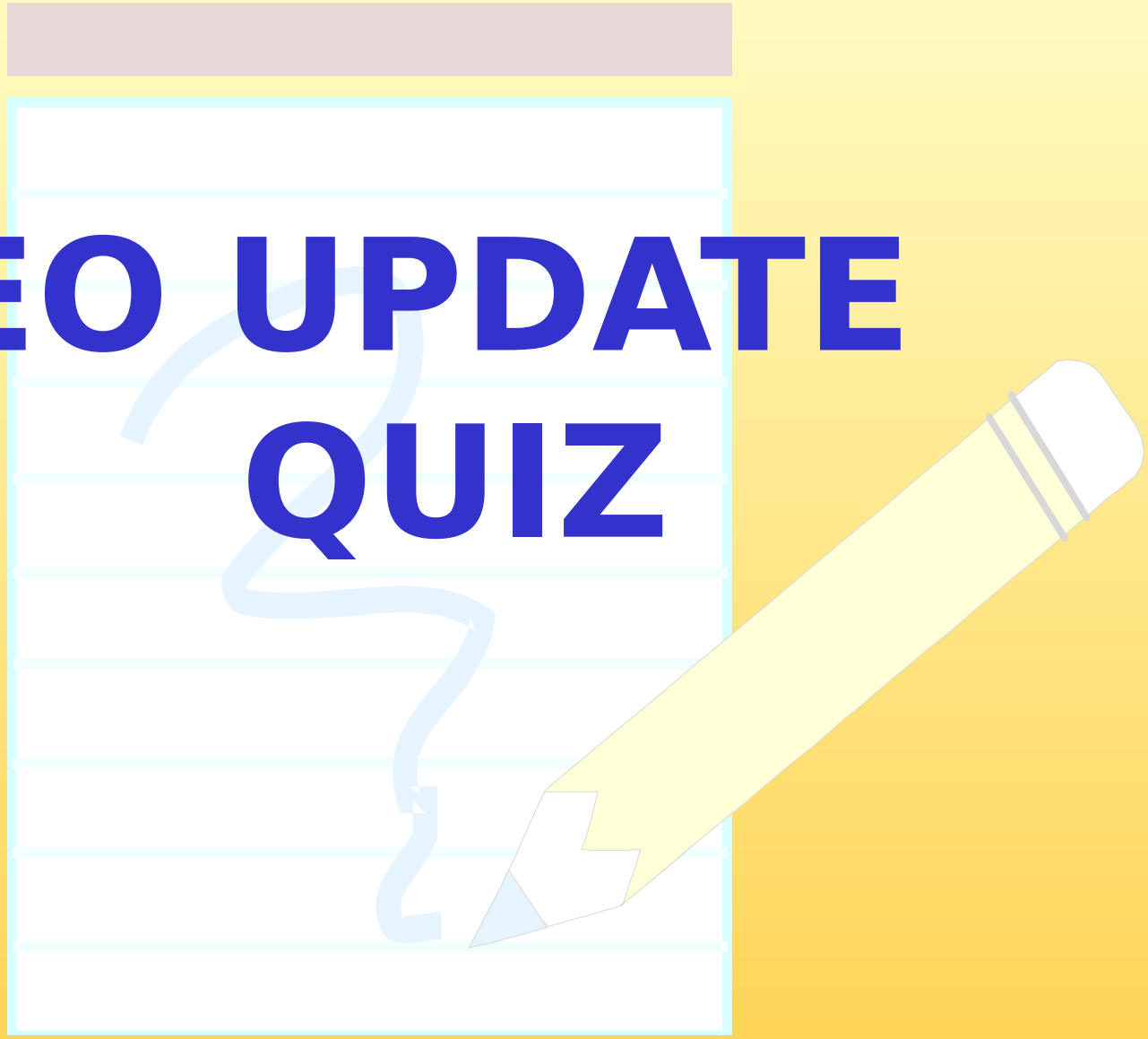
- **Administrative Judges (AJ) may issue final agency decision**
- **Agencies must comply with relief ordered by AJ**
- **Reduces fragmentation of complaints**
- **Offers of Resolution**
- **Effective November 9, 1999**

REVISED 29 CFR 1614

- **Activities are required to establish or make available an Alternative Dispute Resolution Program (ADR) during the pre-complaint and formal complaint processes. ADR services may be obtained from your activity's EEO Supervisors and managers must be aware that they have a duty to cooperate in an ADR process once the agency has determined that a matter is appropriate for ADR.**

- **EEO counselors must have at least 8 hours of counselor training annually.**

EEO UPDATE QUIZ



1. A computer programmer at your activity has inserted a Christian software program on the organization's computer network. Scriptures appear on every computer with every boot-up. A non-Christian employee complained to his supervisor, but was told the software would not be removed from his computer. Is this harassment by the supervisor?

If yes, what type of harassme[illegible]

Push "Page Down" key for Answer:

Yes, this is harassment based on religion. This would be considered non-verbal harassment.

2. Jose, an employee of Filipino descent, is consistently called by nick-names referring to his ethnic background by his co-worker Bob. Bob also teases Jose about having a hot temper, though Jose is always professional in demeanor. At least twice a week Bob tells the work group Filipino jokes, [illegible] If yes, what type of harassment?

Push "Page Down" key for Answer:

Yes, this is an example of verbal harassment which may be based on race/national origin.

3. Shop supervisor Henry Jacobs supervises a workforce that is about seventy percent male. He often calls the women “babe” and the men “dude” or “stud,” especially in private conversation with them. Most of the people who work for him like him, but they consider him overbearing and obnoxious. When he is angry with someone or does not get his way, he often yells at them publicly, saying things like, “You turkey, when are you going to get your act together?” or “Your mother could do a better job than this!” He pats the men on the back when he is feeling good about their work and pats the women on the head. Is this harassment?

A: No, he is treating both men and women badly.

B: Yes, because women are the minority in the workplace; a woman would be likely to prevail on a sexual harassment claim.

C: No, but his behavior is inappropriate and could lead to complaints.

Push “Page Down” key for Answer:

C is the best answer. As a whole, the supervisor’s pattern of conduct does not appear to be actionable sexual harassment. The improper words and gestures appear to be directed at everyone, male and female, in the workplace. There is no question, however, that the supervisor’s behavior is inappropriate. This kind of behavior could easily lead to complaints of sexual harassment, however -- most likely from the females, who are the minority in the work place. Female employees may perceive the use of words like “babe” and the head-patting actions (in addition to the yelling) as offensive and directed at them because of their sex and thus may pursue a hostile work environment claim.

4. How can an employer avoid liability for unlawful harassment?

A: Show the employee has not suffered loss of a tangible job benefit

B: Prove that it took steps to prevent and correct promptly any sexually harassing behavior.

C: Show the employee failed to take advantage of any corrective opportunities provided by the organization or to avoid harm otherwise.

D: Show employer was not aware of the supervisor's behavior.

Push "Page Down" key for Answer:

A, B and C are the best answers. The employer is still responsible for the unlawful acts of it's supervisors, even if it did not know of the supervisor's behavior.

5. Dennis is very vocal and frequently complains that the agency discriminates against older workers in RIFs and in other ways. He has recently been given a letter of reprimand for tardiness but believes that he has been disciplined for complaining.

Can he file an EEO complaint? If so, what is the basis?

Push "Page Down" key for Answer:

Yes - Dennis can certainly file an EEO complaint and his basis would be Retaliation (opposition to a protected activity covered by Title VII).

6. At Christmas time, a supervisor places a wreath over the entrance to the office's main reception area. Is this religious harassment? ___yes____no

Push "Page Down" key for Answer:

No - hanging a Christmas wreath is permitted as long as a reasonable observer would not interpret the expression as government endorsement, sponsoring or inhibiting , favoring or disfavoring a particular religion.

7. Josephine wears clothing with religious expressions on it and reads her Bible at her desk. Her supervisor is not clear as to what he should do. What would you do?

A: Send her home and direct her to change her clothes,

B: Advise her that she may read her Bible at her desk before and after work; during lunch and on breaks; but not during working hours.

C: Don't see anything wrong

Push "Page Down" key for Answer:

B - is the best answer. In addition, guidance on religious expression allows employees to wear clothing with religious expression; religious jewelry, medallions. Unless the expressions are offensive to others, typically, these expressions are personal and do not alone constitute religious harassment.

8. During lunch, certain employees gather on their own time for prayer and Bible study

in an empty conference room that employees are generally free to use on a first-come,

first served basis

Push "Page Down" key for Answer:

No - Lunch time gatherings do not constitute religious harassment even if other employees with different views on how to pray might feel excluded or ask that the group be disbanded. Gatherings such as this may not be subject to discriminatory restrictions because of its religious content.

HOW TO DOCUMENT COMPLETION OF TRAINING

- **In order to update the personnel database and receive credit for completion of this course, your supervisor must certify in writing the date of completion of this training and fax certification to the HRSC-East Training Department at (757) 396-7977.**

THANK YOU FOR YOUR PARTICIPATION

The HRSC-Pacific created this alternative approach to EEO training.